

GERHARD W. BEFELD
MARIE D. BEFELD

IBLA 90-469

Decided May 19, 1992

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting recordation of notices of location for placer mining claims CA MC 233749 and CA MC 233751 through CA MC 233753.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claim Certificates or Notices of Location--Federal Land Policy and Management Act of 1976: Service Charges--Fees--Mining Claims: Recordation of Certificate or Notice of Location--Notice: Constructive Notice

It is proper for BLM to reject location notices for placer mining claims submitted for recordation under 43 CFR 3833.1-4(a) because the claimants failed to tender the proper service charge within 30 days from the date claimants were deemed to have constructively received a deficiency notice requiring such payment. The record establishes that the deficiency notice was addressed to and the post office properly attempted delivery to the claimants' last address of record.

APPEARANCES: Gerhard W. and Marie D. Befeld, pro sese.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Gerhard W. and Marie D. Befeld have appealed from a June 20, 1990, decision of the California State Office, Bureau of Land Management (BLM), rejecting their notices of location of the Discovery Mine Nos. 1 and 3 through 5 placer mining claims (CA MC 233749 and CA MC 233751 through CA MC 233753). The Befelds located these claims and the Discovery Mine No. 2 placer mining claim (CA MC 233750) in sec. 36, T. 5 S., R. 5 E., San Bernardino Meridian, Riverside County, California, on November 24, 1990. The notices were submitted on January 30, 1990, for filing pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1988), and 43 CFR 3833.1-2.

By decision dated February 27, 1990, BLM notified the Befelds that the Discovery Mine No. 2 claim was deemed null and void ab initio in its

entirety because it was located entirely on patented land. 1/ BLM also noted that the Befelds had failed to submit the service fee for recording their location notices required by 43 CFR 3833.1-3(b), and directed the Befelds to submit the \$10-per-claim filing fee for the Discovery Mine Nos. 1 and 3 through 5 claims within 30 days from the date of receipt of the decision, stating that failure to submit the fees would also result in the rejection of all of the documents submitted for recordation.

BLM made two attempts to complete service of its February 1990 decision by mailing the decision by certified mail, return receipt requested. The first mailing was sent near the end of February 1990. The first envelope indicates that the post office attempted delivery on March 1 and 8, 1990. It was marked "unclaimed" and returned to BLM on March 16. BLM received the returned document on March 27, 1990. A notation on the first envelope indicates that the decision was resent on March 29, 1990. The second envelope indicates that the post office attempted delivery on April 3 and 16, 1990, and that it was returned to BLM on April 21. BLM received it on May 4, 1990. The address on the face of both envelopes is the same as that set out on the location notices, the June 1990 decision received by the Befelds, and their notice of appeal. The attempts to deliver the decision appear to be in accord with proper post office procedure. See Rick Lee McMullen, Jr., 105 IBLA 80, 82-83 (1988).

BLM took no further action until June 20, 1990, when it issued its decision rejecting the location notices because of the failure to submit the required service fee. BLM also declared the claims abandoned and void because the Befelds had failed to properly file their location notices in a timely manner (see 43 U.S.C. § 1744(c) (1988); 43 CFR 3833.4(a)). 2/ The Befelds appealed from the June 20, 1990, decision.

It is understandable that the Befelds' statement of reasons for appeal reflects a lack of awareness of BLM's February 1990 decision. For example, for the Discovery Mine No. 2 claim they ask: "Was it rejected in an earlier decision not received by me?" 3/ Significantly, however, appellants assert that BLM cannot reject their mining claim location notices for failure to tender the required service fee because BLM failed to give them notice of the deficiency, as required by 43 CFR 3833.1-4(a).

1/ The Feb. 27, 1990, decision also contained a number of other findings not important to this decision.

2/ The June decision also stated that the claims could be relocated, subject to valid intervening rights, and that location notices for the newly located claims should be filed for recordation with BLM.

3/ The Discovery Mine No. 2 claim, which was declared null and void ab initio in its entirety in the February 1990 BLM decision, was not mentioned in the June 20, 1990, decision and is not currently before us. We again note that service of the February 1990 decision is deemed to have been completed on Mar. 27, 1990, and became final 30 days later. See Turner Brothers Inc. v. OSM, 102 IBLA 111, 121 (1988).

[1] Under section 314(b) of FLPMA and 43 CFR 3833.1-2(a), the owner of a mining claim located after October 21, 1976, must file a copy of the official record of his location notice for recordation with BLM within 90 days of the date of location. In addition, 43 CFR 3833.1-3(b) provides that "[e]ach mining claim * * * filed for recordation shall be accompanied by a nonrefundable service charge of \$10.00."

Failure to submit the required service charge for filings made prior to January 1, 1991, does not have immediate adverse consequences, however, because the owner has 30 days from receipt of a deficiency notice to submit the proper amount. See Herbert M. Cole, 115 IBLA 272, 274 (1990). The regulation at 43 CFR 3833.1-4(a) provides that a location notice filed prior to January 1, 1991, will be noted as being recorded on the date received provided that the claimant submits the proper service charge within 30 days of receipt of a deficiency notice from BLM. "Failure to submit the proper service charge shall cause the filing to be rejected." Id.

BLM complied with 43 CFR 3833.1-4(a) in February 1990, when it sent the deficiency notice to appellants and directed them to submit the charge within 30 days of receipt of the decision. For some reason appellants did not receive the February 1990 decision sent to their last known address. However, a communication sent to an individual will be deemed to have been received if it was delivered to the individual's last address of record, and receipt will be deemed to have occurred "regardless of whether the communication was in fact received." 43 CFR 1810.2(b). That regulation provides that an

offer of delivery which cannot be consummated at [the] last address of record because the addressee had moved therefrom without leaving a forwarding address or because delivery was refused or because no such address exists will meet the requirements of this section where the attempt to deliver is substantiated by post office authorities.

Id.

BLM sent the February 1990 decision to appellants' last address of record and it is deemed to have been constructively delivered in accordance with 43 CFR 1810.2(b). The regulation puts the onus on those dealing with BLM to maintain a current, valid address of record with BLM and to provide for receipt of legally significant documents at that address. See Robert D. Nininger, 16 IBLA 200, 202 (1974), aff'd, Nininger v. Morton, No. 74-1246 (D.D.C. Mar. 25, 1975). When a party fails to do so, e.g., by failing to change the address of record or refusing to accept delivery at that address, the party will nevertheless be deemed to have received documents if the attempt to deliver the document at the last address of record can be proven.

There is nothing in the record which might explain why the post office was unable to deliver the February decision to appellants. However, the record clearly shows that the decision was addressed to appellants at their last address of record (and the address shown on their location notices)

and that the post office attempted to deliver the envelope containing the decision at that address. There is no evidence that either BLM or the post office did not properly perform its duties. Cf. David Robertson, 107 IBLA 114, 117 (1989) (post office failed to properly deliver mail); Victor M. Onet, Jr., 81 IBLA 144, 146 (1984) (BLM failed to mail document to last address of record). Therefore, under 43 CFR 1810.2(b), appellants are deemed to have received the decision. See J-O'B Operating Co., 97 IBLA 89, 92 (1987), and cases cited therein. The date of receipt will be the date the first envelope containing the February 1990 decision was returned to BLM, i.e., March 27, 1990. See id.; James Darby, 92 IBLA 231, 233 (1986).

Being deemed to have constructively received the February 1990 decision which served as the deficiency notice pursuant to 43 CFR 3833.1-4(a), appellants were obligated to submit the required service charge within 30 days of the date of constructive receipt or face rejection of the filing of their location notices under that regulation. Cf. J-O'B Operating Co., supra (rejection of lease application where failure to timely submit lease offer in response to 30-day notice to do so). Appellants did not submit payment on or before April 26, 1990. Therefore, BLM properly rejected appellants' location notices for the Discovery Mine Nos. 1 and 3 through 5 placer mining claims because they failed to submit payment of the service charge within 30 days of notice to do so. See Arthur A. Gotschall, 88 IBLA 276, 277-78 (1985).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

